

**EXHIBIT A TO PURCHASE AND SALE AGREEMENT
BETWEEN TOWN OF BELMONT AND SMITH LEGACY PARTNERS
SERIES LLC**

**LAND DEVELOPMENT AGREEMENT
116 Trapelo Road, Belmont, Massachusetts**

PARTIES

THIS LAND DEVELOPMENT AGREEMENT (this “LDA” or “Agreement”), dated as of this _____ day of _____, 20__, is made by and between the TOWN OF BELMONT, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with an address of 455 Concord Avenue, Belmont, Massachusetts 02478 (hereinafter, with its successors and assigns, referred to as the “Town”), and SMITH LEGACY PARTNERS SERIES LLC, a Delaware limited liability company, having its principal office at 6 Littlefield Road, Acton, Massachusetts 01720 (hereinafter, with its successors and permitted assigns, referred to as the “Developer”).

RECITALS

WHEREAS, the Town, in recognition of the unique location, function and character of the Cushing Square commercial area, adopted the Cushing Square Overlay District, a copy of which is attached hereto as Exhibit A and incorporated herein (the “CSOD”), being Section 8 of the Belmont Zoning By-Law, in order to, among other objectives, encourage revitalization of Cushing Square and promote the redevelopment of the Cushing Square properties and the creation of mixed-use development, incorporating residential use and either or both retail and office uses;

WHEREAS, the Town, as owner of a certain parcel, used as a municipal parking lot, issued a Request for Proposals, attached hereto as Exhibit B and incorporated herein (the “RFP”), dated July 30, 2008, for the disposition of said property, located at 116 Trapelo Road, Belmont, being Assessor’s Map 12, Lot 211A, described in a deed recorded with the Middlesex Registry of Deeds in Book 4647, Page 232 , more particularly described in Exhibit I attached hereto (the “Premises”), to further the goals and objectives of the CSOD;

WHEREAS, the Developer submitted a proposal in response to the RFP, attached hereto as Exhibit C and incorporated herein (the “Proposal”), for a mixed-use development, partially located upon the Premises, and partially located upon other property owned and/or controlled by the Developer, being Assessor’s Map 12, Lots 207 through 211 and Lot 233, more particularly described in Exhibit J attached hereto (the “Adjoining Property,” together with the Premises, the “Property”), said mixed-use development containing residential use and either or both retail and office uses, and parking to accommodate both the Project, and an additional fifty (50) spaces for the public;

WHEREAS, the Developer has designed a development to, among other objectives, encourage revitalization of Cushing Square; promote the redevelopment of under-utilized

properties in a coordinated and well-planned manner and promote mixed-used development, incorporating residential use and either or both retail and office uses;

WHEREAS, the Town, for consideration of Eight Hundred Fifty Thousand (\$850,000.00) Dollars, and pursuant to a Purchase and Sale Agreement (the “P&S Agreement”) dated March 21, 2011 by and between the Town and Developer, a copy of which is attached hereto as Exhibit H, conveyed the Premises to the Developer by deed of even date herewith and recorded immediately prior hereto, subject to: (a) an easement for fifty (50) public parking spaces (the “Parking Spaces”), pursuant to a parking area operating agreement [to be] attached hereto as Exhibit G), (b) a pedestrian access and utility easement in Horne Road; (c) a sewer and stormwater easement; and (d) this Land Development Agreement.

WHEREAS, the conveyance is conditioned upon the Developer constructing the Development as defined in the P&S Agreement and below, plus an additional fifty (50) public spaces (the same as further described herein, the “Project”); and

WHEREAS, the Developer, in partial consideration for the Property, agrees to develop the Property and undertake, at its sole cost and expense, all the work that is required to be done under this LDA to construct, develop and complete the Project (the “Work”).

NOW, THEREFORE, each of the parties hereto for and in consideration of the promises and mutual obligations herein contained, does hereby covenant and agree with the other as follows:

AGREEMENT

I. RECITALS and DEFINITIONS

The Recitals stated above are true and accurate and are incorporated herein by reference. Relevant definitions from the P&S Agreement are hereafter set forth: “Development” means the development shown on the Approved Plans defined in Section II A. 2 below and “Completion Deadline” means within thirty (30) months from sixty (60) days after the date on which the deed to the Premises was recorded.

II. DEVELOPMENT AGREEMENT

Developer agrees (for itself and any successors and assigns) to develop the Property and undertake the Project as follows:

A. Construction Obligations

1. Construction of Project. The Developer shall design and construct on the Property the following improvements:

- (a) *Buildings:* the Property is to be used for a mixed-use development including residential uses and either or both retail or office uses (the “Buildings”), with parking, to be constructed in accordance with the Approved Plans, as hereinafter defined;

(b) *Parking*: parking spaces adequate to serve the Buildings, pursuant to the requirements of the Zoning By-Law, plus fifty (50) spaces for use by the public, at the locations identified on the Approved Plans, as hereinafter defined. During construction of the Project, fifty (50) spaces for use by the public must be provided somewhere on the Property at all times as provided below. Developer commits to provide 50 parking spaces of alternative, interim parking during construction, with location and the number of spaces at each interim site (always totaling 50) during construction to be as approved in his reasonable discretion by Ralph T. Jones, who currently serves as the Chairman of the Board of Selectmen, to whom this discretion shall be delegated by the Board of Selectmen, this delegation or appointment to continue whether or not Ralph T. Jones continues to serve as Chairman or member of the Board of Selectmen, based on the proximity of the alternative site(s) to the existing parking, anticipated traffic flow and public safety for both vehicles and pedestrians, recognizing the need to satisfy parking demand for these operating businesses in the area formerly served by the 116 Trapelo Road municipal lot ("Municipal Lot" or sometimes referred to in this Agreement and the P&S Agreement as the "Premises") and the limitations of a private developer acting without benefit of "taking" authority.

2. Approved Plans. The Project shall be constructed in accordance with site plans and elevation plans approved by the Town, through its Planning Board, (the "Approved Plans"), which shall be attached hereto, prior to the closing, as Exhibit D and incorporated herein. The Developer agrees not to make any substantial changes or revisions to the Project as shown on the Approved Plans, including, without limitation, any changes to the Buildings, parking, roads and footpaths, and landscaping of a temporary or permanent nature during the course of construction unless such changes are approved by the Planning Board and allowed by right or by special permit under CSOD if still a part of the Zoning Bylaw and otherwise under then-applicable provisions of the Zoning Bylaw. Nothing herein shall be deemed to waive the Developer's obligations to apply for and comply with all other permits, approvals and conditions governing the Property or the Project.

3. Construction Schedule. The Developer shall:

(a) commence construction of the Project pursuant to the building permit(s) issued by the Town, as provided below: subject to the terms hereof and "unavoidable delays"/force majeure and the Extensions described below, the date on which construction of the Project shall commence (the "Construction Commencement Date") shall be either: (a) the date that is no later than 12 months after the appeal period pertaining to the Special Permit has expired without an appeal having been filed or (b) the date that is no later than 12 months after any appeal (by any party, including without limitation the Developer to the limited extent that a Developer appeal may extend deadlines under the Purchase and Sale Agreement) is fully and finally disposed of.

Extension Options: Developer shall have 24 one-month Construction Commencement Date Extension Options. The first 12 Extension Options shall each cost the Developer \$20,000, and the next successive 12 Extension Options shall each cost \$30,000.

(b) complete remediation of any contamination of the parcel known as Trapelo/Common area (Assessor's Map 12, Lots 207 through 211), including release of any

hazardous materials upon other portions of the Property, as required by law during its construction;

(c) substantially complete the Project in accordance with the terms of this LDA by the Completion Deadline, as defined in the P&S Agreement and above. The Project shall be “Substantially Complete,” or “Substantial Completion” shall occur, when the Project has been constructed such that Developer has obtained certificates of occupancy for the Buildings, with only minor “punch list” items remaining that will not materially interfere with said use and occupancy.

4. Construction Schedule Extensions. The Town, at its sole option, may extend these deadlines if the Town determines that the Developer has proceeded with reasonable diligence in its performance under this Agreement. The Town shall reasonably extend the deadlines under this Agreement for “Unavoidable Delays” and other events beyond the control of the Developer. For purposes of this Agreement, “Unavoidable Delays” shall mean any delay, obstruction or interference resulting from any act or event whether affecting the Project or the Developer, which has a material adverse effect on the Developer’s rights or duties, provided that such act or event is beyond the reasonable control of the Developer after pursuing diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of the Developer or could not have been prevented by reasonable actions on the Developer’s part and the Developer shall have notified the Town herein not later than thirty (30) days after discovering the occurrence of the Unavoidable Delay enumerated herein and within a reasonable time, including but not limited to, delay, obstruction or interference resulting from: (i) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, international geopolitical crisis, riot or civil disturbance; (ii) any legal proceeding commenced by any bona-fide third party seeking judicial review of this Agreement or any governmental approvals, or any restraint of law (e.g., injunctions, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority); (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Property, which are required for the construction of the Project or for other obligations of the Developer; (iv) any unexpected or unforeseen subsurface condition at the construction site inconsistent with typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the completion schedule for, the Project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Property but not readily identifiable by visual inspection and which originated from the Buildings or Property; (vi) strikes, work stoppages or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in Developer Financing which could not have been reasonably anticipated by Developer; or (ix) any unreasonable delay which is caused or created by a board, officer, department or authority of the Town from whom a Project approval is sought, whether or not such fault is caused by negligent or willful acts or omissions, provided that the Developer shall have timely complied with the reasonable requests

and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of the Unavoidable Delay, and in calculating the length of the Unavoidable Delay, there shall be considered not only actual work stoppages but also any consequential delays resulting from such stoppages as well.

5. Quality of Work. The Developer shall procure all necessary permits before undertaking any Work, and shall cause all the Work to be performed in a good and competent manner in compliance with good engineering and construction practices, and using new materials of customary quality or appropriate preservation measures for redevelopment projects in the greater Belmont area similar to the Project, all in accordance with the Approved Plans and all applicable laws, ordinances, codes, regulations, permits, approvals and conditions. As and to the extent required in the Approved Plans, the Developer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. As a precondition for the issuance of any Certificate of Substantial Completion hereunder, the Developer shall provide a certification to the Town by a licensed architect, at the Developer's expense, that the Work is done substantially in accordance with the Approved Plans (the "Independent Architect").

6. Certificate of Substantial Completion:

(a) Promptly after "Substantial Completion" of the Project as the term "Substantial Completion" is defined in Section II.A.3.(c) above, the Town will furnish the Developer with an appropriate instrument so certifying (the "Certificate of Substantial Completion"). The Certificate of Substantial Completion shall be in such form as will enable it to be recorded in the Middlesex South District Registry of Deeds.

(b) If the Town shall refuse or fail to provide the Certificate of Substantial Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such certification.

(c) Notwithstanding anything to the contrary in this Agreement, the Certificate of Substantial Completion, issued by the Town pursuant to Section II.A.6(a), above, shall be a conclusive determination of satisfaction and termination of this Agreement and covenants in this Agreement, except those that expressly survive the termination of this Agreement. Any such certification shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Funding Source, including any Mortgage Holder or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. The issuance of the Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this LDA other than as to obligations hereunder that survive the issuance of the Certificate of Substantial Completion.

7. Liquidated Damages. Subject to “unavoidable delays”/force majeure, if substantial construction of the Project does not commence in fact within the time period for the Construction Commencement Date as it may be extended, or if construction is discontinued for a continuous period of 30 days or more at any time prior to substantial completion (provided that the Town gives written notice of observed discontinuance and provides Developer and Developer’s First Mortgagee with a 15-day period to cure), or if the Project is not substantially completed 30 months following 60 days after the Closing Date, then in any or all of these events, the Developer shall commence making monthly payments to the Town at the rate of \$33,333 per month and the period for commencement of construction, resumption of construction or completion of construction, respectively, shall be extended for each month for which payment is received by the Town, such extensions not to exceed a cumulative total of 24 months. Such monthly payments shall not exceed \$800,000.00 in the aggregate. As security (the “Town Security”) for such payments, on the Closing Date, the Developer, at its option, shall provide the Town with irrevocable letter(s) of credit or other form of easily liquidated security such as certificate(s) of deposit, or (with the Town’s consent) other forms of security (which if a mortgage may be subordinate to other mortgages relating to the Project only if sufficient equity in the Project remains so that the Project Completion Payments are adequately secured) in the total combined amount of \$800,000.00, with such amount (and security) being reduced in proportion to the square footage of finished residential or commercial space for which certificate(s) of occupancy are issued as a percentage of the total permitted square footage of the Project at the end of each six-month period following the Closing Date. If the Town objects to such other forms of security, Town and Developer will each propose a professional to review and approve the proposed security as adequate to secure the \$800,000 obligation. If such professionals disagree, they will choose a third professional, and his/her decision will be final, provided that if such security is not approved by such third professional, Developer will have the option to provide up to three additional alternative forms of security to be reviewed by professionals in a similar manner.

B. Financial Obligations

1. Financing. The Developer has obtained funds sufficient to purchase the Premises and to construct and complete the Project from one or more lenders or mortgage holders or other funding, equity and other financing sources as set forth in Exhibit F attached hereto and incorporated herein (singularly a “Funding Source” and collectively the “Funding Sources”), secured by one or more mortgages, deeds of trust or other instruments creating an encumbrance or lien upon the Property to be recorded hereafter and including as the same may be refinanced, subject to paragraph 2 below, (the “Mortgage(s)”). The holder(s) of the Mortgage(s), which shall include any insurer or guarantor of any obligation or condition secured by any Mortgage, is (are) referred to herein as the “Mortgage Holder(s).” The Developer agrees to pay all amounts due in accordance with the requirements of the Funding Sources. The Mortgage(s) shall be subject to and subordinate to this LDA. The Town shall provide to the Funding Sources advance notice and opportunity to cure any default under this LDA as provided in Section II of this LDA and shall consent to the Funding Sources exercising any rights under their Mortgages and security agreements, including but not limited to rights to take title and or control of the Project, pursuant to Mortgage(s) and any other collateral security, financing or loan documents entered

2. Refinancing/Additional Financing. The Developer shall provide the Town with thirty (30) days prior written notice of any intended refinancing of the Funding Sources that is to occur prior to Substantial Completion, which shall be approved by the Town provided that the total indebtedness shall not exceed the then appraised value of the Property and that any refinancing is on terms equal to or more favorable than the Funding Sources. Any other refinancing or additional financing prior to Substantial Completion shall require the written consent of the Town, which consent shall not unreasonably be withheld or denied and in any event shall be reviewed consistent with the provisions of Section 19(a) of the P&S Agreement. The term “Mortgage(s)” or “Funding Sources” shall include said later approved refinancing or additional financing.

3. Obligation to Pay Taxes and Assessments. The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over the Mortgage(s), but this clause shall not be deemed to preclude Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

4. Architect. The Developer has retained [to be inserted when Agreement is signed] . to prepare, complete, and submit architectural submissions as contemplated under this LDA and to provide construction supervision services for the Project. The Developer may not substitute another architect without the Town’s prior written consent, which shall not be unreasonably withheld.

5. Representatives. The Developer shall designate in writing a representative or representatives authorized to act on its behalf. Unless and until the Town has received written notice that such authority has been revoked, the Town shall be entitled to rely upon the directives of such representative(s). The Town shall act by and through the **[TO BE DESIGNATED BY THE TOWN PRIOR TO CLOSING]** of the Town.

III. RESTRICTIONS

A. From the date the parties enter into this LDA and until the Town has issued the Certificate of Substantial Completion, the following restrictions shall bind the Developer, the Property and the Project:

1. Prohibition Against Change in Identity and Ownership. This LDA is being entered into as a means of permitting and encouraging the development of the Property in accordance with the CSOD, and the objectives of the Town for the redevelopment of the Property as put forward in the Recitals, and not for speculation in landholding. The Developer acknowledges that, in view of:

- (a) The importance of the undertakings set forth herein to the general welfare of the community;

(b) The importance of the identity of the parties in control of the Developer and the Project; and

(c) The fact that a transfer of all or a majority of the legal or beneficial ownership in the Developer, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such ownership or change in the identity of the parties in control of the Developer or Project, is for practical purposes a transfer or disposition of the Developer's interest in the Project;

It is hereby understood and agreed that Christopher L. Starr and Arthur A. Klipfel III are the Designated Representatives of Developer. The Town recognizes that the Developer is part of a joint venture with Oaktree Development, LLC, a Massachusetts limited liability company, to form Cushing Village LLC, a Massachusetts limited liability company, whose managers are SLP Holdings LLC, a Massachusetts limited liability company, and Oaktree Cushing LLC, a Massachusetts limited liability company. The Town approval provisions of this paragraph shall not apply to changes in beneficial interest by and amongst the Developer, Cushing Village LLC, Oaktree Development LLC, SLP Holdings LLC and Oaktree Cushing LLC. Except as otherwise provided in this Section III.A.1., it is hereby agreed that, commencing on the date hereof and continuing until the issuance of the Certificate of Compliance by the Town, and except by reason of death, there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Developer, (ii) transfer or pledge in the aggregate of a majority of the beneficial ownership or control of Developer or (iii) transfer, by assignment or otherwise, of the Developer's rights under this LDA or of the Developer's legal or beneficial interest in the Property to any person (including but not limited to, any partnership, joint venture or corporation) (all such changes being referred to herein as a “Change in Identity”), unless in each instance, (a) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Town to evaluate the acceptability of the proposed Change in Identity, and (b) the Town, within thirty (30) days from the date on which the Town receives said written notice or such longer period as may be approved by the Developer and the Town, approves of such change in writing, or fails to object, in which case the proposed Change in Identity shall be deemed to be approved. If the Town notifies the Developer in writing within said thirty (30) day period (or longer period agreed to by the parties) of its objection to the proposed Change in Identity, specifying reasonable grounds for such objection, the Developer shall make no Change in Identity without the subsequent written consent of the Town. Any attempted Change in Identity made contrary to this Section shall be void.

In order to fulfill the purposes of this Section, the Developer agrees that during the period between execution of the LDA and the issuance of a Certificate of Substantial Completion by the Town, the Developer shall, on each anniversary of the date of this LDA and at such other time or times as the Town may request, furnish the Town with a complete statement, subscribed and sworn to by the Designated Representative of the Developer, setting forth the names of all of the members and managers of the Developer and the extent of their respective interests, and provide copies of all records and documents of the Developer that show the identities of all those who have an interest (legal or beneficial, direct or indirect) in the Developer, the Property or the Project.

The foregoing restrictions on the Change in Identity shall not be binding on a mortgagee of the Property which has foreclosed its mortgage and taken possession of the Property.

2. Prohibition Against Transfer of Property. For all of the same reasons stated in Section III.A.1 above, the Developer represents and agrees for itself, and its successors and assigns, that, except for the granting of a first mortgage to the Lender and the refinancing of the same, and entering into other customary security agreements with the Lender, and the granting of easements necessary for the construction of the Project, including utilities, the Developer shall not sell, assign or otherwise transfer the Property or any portion thereof without the prior written consent of the Town, which may be withheld in the Town's sole and absolute discretion. The term "transfer" shall include, without limitation, any total or partial sale, mortgage, assignment, lease (not including the transfer or lease of the residential units or lease of the non-residential space in the ordinary course of business), or contract or agreement for any of the same. It is the intent of this Section that the prohibition on transfer of the Property shall not apply to transfers resulting from the foreclosure of permitted mortgages, provided that the transferee assumes and agrees to comply with all conditions and agreements contained in this LDA and the Deed, including, but not limited to the obligation to construct the Project, as modified with the consent of the Town to suit the transferee's needs, or exercises any of the other options set forth in Section V.2 below. No transfer shall relieve the Developer of its obligations hereunder, who shall be jointly and severally liable with the transferee. Any attempted assignment or other transfer made contrary to this Section shall be void.

Provided that, prior to the issuance by the Town of the Certificate of Substantial Completion, the Developer may enter into any agreement to sell, lease, or otherwise transfer the Property, provided that such sale, lease or transfer does not occur until after the issuance of the Certificate of Substantial Completion.

B. Restriction on Alterations or Change of Use. The Developer shall not, for a period of thirty (30) years from the issuance of the Certificate of Substantial Completion, alter, demolish, subtract therefrom, reconstruct, make any additions thereto or extensions thereof, or change the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, alteration, addition, extension or change will materially affect in any way the external appearance of the Buildings, or make other changes to the design of the Buildings so as to deviate substantially from the Approved Plans or the CSOD, or change the use unless the Developer obtains Planning Board approval for such alterations under the CSOD, if still a part of the Zoning Bylaw and otherwise under then-applicable provisions of the Zoning Bylaw. Nothing herein shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior feature of the Buildings which does not involve a change in design, material or color of such exterior feature of the Buildings or otherwise change the outward appearance of the façade of the Buildings, nor to prevent landscaping the Property with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any federal, state or local law, rule or regulation. This restriction shall survive the issuance of the Certificate of Substantial Completion.

IV. MAINTENANCE OF PROPERTY; INSURANCE

1. Maintenance of Property. The Developer shall maintain the Property and improvements thereon in good order, condition and repair. Except in compliance with law, the Developer shall not release or permit any new release or threat of release of oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called "hazardous substances"), as those terms are defined by any applicable law, rule or regulation including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., nor generate or permit any hazardous substances to be generated on the Property; nor store or permit any hazardous substances to be stored on the Property.
2. Insurance. The Developer agrees to maintain the following insurance:
 - (a) *Casualty and Property Insurance:* the Developer shall continuously maintain in full force, for the term hereof, a policy of comprehensive casualty, and property damage insurance insuring the Property and all improvements thereto in an amount equal to at least one hundred percent (100%) of the replacement costs thereof, under which, until the issuance of the Certificate of Substantial Completion, the Town shall be named as additional insured and under which the insurer agrees to defend, indemnify and hold the Town harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to: the Project; the condition of the Property; any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the Developer; and failure to comply with the provisions of this LDA or with applicable laws in connection with the exercise of the rights and obligations of the Developer hereunder. All such insurance shall be in the broadest form of coverage from time to time available in Massachusetts. The Developer shall submit to the Town evidence of such continuous insurance coverage satisfactory to the Town before any work is commenced on the Property and no less often than annually thereafter. Casualty and property damage insurance that is acceptable to the holder of a first mortgage on the Property shall be acceptable to the Town;
 - (b) *Liability Insurance:* the Developer shall, at a minimum, carry comprehensive public liability insurance in the amount of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate. The Town shall have the right to require the Developer to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require the Developer to take account of inflation in establishing minimum

(c) *Evidence of Insurance*: All policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. The Developer shall submit to the Town certificates of insurance for all the policies required to be maintained by the Developer hereunder, which certificates shall show at least the coverage and limits of liability specified herein and the expiration date;

(d) *Acceptable Insurers*: all insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts and acceptable to the WRA.

3. The provisions of this Section IV, except subsection 2(a) shall survive the issuance of the Certificate of Substantial Completion except as noted in this Section above.

V. NOTICE AND DEFAULT PROVISIONS

A. Default of Developer and Rights of Parties.

1. Developer Default. The following shall be an event of default by the Developer (referred to herein as “Developer Default”):

(a) Failure by the Developer to observe or perform any of the Developer’s covenants, agreements, or obligations set forth in this LDA within such notice period and subject to such cure provisions as are provided for in this Agreement;

(b) Prior to issuance of the Certificate of Substantial Completion, failure by the Developer, after all applicable cure periods, to observe or perform any of the Developer’s covenants, agreements, or obligations pursuant to the requirements of the Funding Sources;

(c) Prior to issuance of the Certificate of Substantial Completion and in violation of the terms hereof, the sale or other transfer of any kind or nature of the Property, or any part thereof, other than the Mortgage(s) and other than the sale/lease of any completed residence/commercial space in the ordinary course of business, without the prior written consent of the Town;

(d) Prior to issuance of the Certificate of Substantial Completion, the filing by Developer of a voluntary petition, or the filing against Developer of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Developer, or the filing by Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of Developer or of all or any part of Developer's property, without the consent or acquiescence of Developer, such appointment shall not have been vacated or otherwise discharged.

2. Rights of Town Upon Developer Default. In the event of a Developer Default, the Town shall have the right to institute such action and proceedings as may be appropriate against the Developer, including actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction seeking restitution from the Developer in an amount representing the Town's costs, liabilities, losses and expenses resulting directly from the Developer Default. Nothing in this paragraph shall supersede, negate or affect the Town's right to be paid monthly payments not to exceed \$800,000.00 upon occurrence of the events set forth in Section II.A.7. of this Agreement and titled "Liquidated Damages."

3. Rights of Mortgage Holders Upon Developer Default. In the event of a Developer Default, any Mortgage Holder shall have the right to cure any such Developer Default within the cure period.

4. Town's Option To Cure Developer Default. The Town may, at its option, cure any Developer Default, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this LDA, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the Town in curing such Developer Default and the Town Security shall secure the Developer's obligation to pay such reimbursement.

5. Notice of Foreclosure. The Developer shall cause the Mortgage Holders to give not less than sixty (60) days prior written notice to the Town, by registered mail, of each Mortgage Holder's intention to foreclose upon its Mortgage or to accept a conveyance of the Property in lieu of foreclosure, in which event the Town shall have the right, but not the obligation, to cure whatever default(s) have entitled the Mortgage Holder to issue the foreclosure notice, subject to appropriation, which amount, together with the Town's costs and expenses (including counsel fees) shall be added to the amounts due to the Town pursuant to paragraph 4 above.

B. Default of Mortgage Holder.

Any Mortgage Holder in whom title to the Property has vested by way of foreclosure or action in lieu thereof, in the event of a default by the Mortgage Holder, shall be subject to the Developer Default provisions pursuant to Section II.A.1, above, and the Town shall have the enforcement rights set forth in Section II.A.2, above, as if the Mortgage Holder were the Developer.

C. Default of Town.

1. The following shall be an event of default by the Town (referred to herein as "Town Default"):

(a) Upon receipt of written notice by the Developer specifying the failure of the Town to observe or perform any of the Town's covenants, agreements, or obligations hereunder within sixty (60) days following receipt of written notice from the Developer (or its successors or assigns, or any Mortgage Holder), specifying such failure, or such longer period reasonably required to cure the breach, provided the cure was commenced immediately after receipt of said notice and continuously and diligently prosecuted (said cure period, the "Town Cure Period");

(b) Upon receipt of written notice by the Developer specifying the failure of the Town to observe or perform, after all applicable cure periods, any of the Town's covenants, agreements, or obligations under any document or instrument now or hereafter in effect between the Town and the Developer relating to this Project or the Property.

2. Rights of Developer Upon Town Default. In the event that a Town Default has occurred, the Developer's sole remedy shall be to institute actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction, and no monetary damages shall be sought against the Town. In the event that the Developer prevails in an action against the Town for specific performance, and the Town's failure to perform is determined in such action to have been in bad faith, or arbitrary and capricious, then the Town shall pay the Developer's reasonable costs and attorneys' fees in such action.

D. Mortgage Holder's Option to Cure Developer Defaults.

After any Developer Default, each Mortgage Holder(s) shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however, that if the breach or default is with respect to the Developer's failure to construct the improvements in accordance with Project approvals, nothing contained within this LDA shall be deemed to authorize or permit such Mortgage Holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the Town, by written agreement reasonably satisfactory to the Town and any other party having a right to enforce this LDA in the event of default, to complete in the manner provided in this LDA, the Work. Any such Mortgage Holder which shall properly complete the Work or applicable part thereof shall be entitled, upon written request made to the Town, to a Certificate of Substantial Completion in the manner provided in Section II.A.7.a.

VI. GENERAL PROVISIONS

A. Access. The Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA, provided, however, that the Town provides the Developer at least twenty-four hours' prior notice thereof, except in the event of an emergency.

B. Compliance with Laws. The Developer shall carry out the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all necessary permits.

C. Development Costs. The Developer shall be solely liable for all costs incurred in construction of all the Work required under this LDA to restore and adapt the Property for the Project and in compliance with all laws, ordinances, rules, regulations and codes applicable to the permitted use.

E. Enforcement. The parties hereto, and thereafter the permitted successors and assigns of the parties hereto, covenant and agree that the losing party will reimburse the winning party for all reasonable costs and expenses (including without limitation attorney's fees) incurred in enforcing (but not defending against the enforcement action of the other party) this LDA or in remedying or abating any violation thereof, provided that no obligation shall arise under this section until a court of competent jurisdiction shall have determined that the party from whom reimbursement is being sought has violated this LDA and, with regard to any violation by the Town, such court shall also have determined that the Town has acted in bad faith or arbitrarily and capriciously.

F. Indemnification/Liability. The Developer agrees to defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorney's fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town by reason of this LDA, including, but not limited to, those arising from any release or threat of release of any hazardous materials which are placed on, in or under all of any portion of the Property, whether pre-existing or occurring after the date of this LDA, but excepting for matters which are the result of the negligence or willful misconduct of the Town or its employees or agents. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

G. Notices. Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (1) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing: TOWN:

If to the Town of Belmont:

Town Administrator

Belmont Town Hall
455 Concord Avenue
Webster, MA 02478
Telephone: (617) 993-2612
Facsimile: (617) 993-2611

With a copy to:

Jeanne S. McKnight, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
Telephone: (617) 556-0007
Facsimile: (617) 654-1735

DEVELOPER:

If to the Developer:

SMITH LEGACY PARTNER SERIES, LLC
6 Littlefield Road
Acton, MA 01720
Telephone: (978) 502-2276
Facsimile: (978) 263-1086

With a copy to:

Christopher L. Starr
SLP Holdings LLC
6 Littlefield Road
Acton, MA 01720
Telephone: (978) 502-2276
Facsimile: (978) 263-1086

With a copy to:

Gwendolen G. Noyes and Arthur A. Klipfel
Oaktree Cushing LLC
129 Mt Auburn St. 3rd Floor
Cambridge, MA 02138
617 491 9100

And with a copy to:

Ronald W. Ruth, Esq.
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
Telephone: (617) 646-2165
Facsimile: (617) 646-2222

H. Notice of Mortgage Holders. The Developer shall, at all times, provide the Town with an up-to-date list of names and addresses of Mortgage Holders. Any Mortgage Holder may also notify the Town of its address.

I. Waiver. The failure on the part of the Developer or Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this LDA or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

J. Headings and Captions for Convenience Only. The captions and headings throughout this LDA are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this LDA, nor in any way affect this LDA, and shall have no legal effect.

K. Binding: The terms of this LDA shall be binding on the parties, and their respective successors and assigns. All covenants, agreements, terms and conditions of this LDA shall be construed as covenants running with the land.

L. Entire Agreement of Parties; No Oral Agreement. There are no oral agreements between the parties hereto affecting this LDA, and this LDA supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this LDA.

M. Governing Law. This LDA shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

WITNESS the above execution hereof under seal as of the day and year first above written.

TOWN OF BELMONT,
By its Board of Selectmen

SMITH LEGACY PARTNERS
SERIES, LLC

By: _____
Duly Authorized

Exhibits

Exhibit A: Cushing Square Overlay District (Belmont Zoning By-Law, Section 8)
Exhibit B: Request for Proposals
Exhibit C: Proposal
Exhibit D: Approved Plans
Exhibit E: Construction Schedule
Exhibit F: Funding Sources
Exhibit G: Parking Area Operating Agreement
Exhibit H: Purchase and Sale Agreement
Exhibit I: Premises Description
Exhibit J: Adjoining Property Description

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 2011, before me, the undersigned Notary Public, personally appeared _____, Selectman of the Town of Belmont, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, on behalf of the Town of Belmont.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, 2011, before me, the undersigned Notary Public, personally appeared _____, _____ of Smith Legacy Partners Series LLC, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, on behalf of Smith Legacy Partners Series LLC.

Notary Public
My Commission Expires:

415254v.7/BELM/0080

Exhibit A

Cushing Square Overlay District (Belmont Zoning By-Law, Section 8)

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Parking Area Operating Agreement

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